APPENDIX A

A Partial Listing of Cases Pending in State and Federal Courts Involving the Same Issue Pending Before the Supreme Court in No. 823, October Term, 1961

COLORADO (State District Court in and for the City and County of Denver):

Colorado Interstate Gas Co. v. Pan American Petroleum Corp.

DELAWARE (Suits in Superior Court):

Colorado Interstate Gas Co. v. Helmerich & Payne, Inc. (three suits)

Cities Service Gas Co. v. Western Natural Gas Co.

Cities Service Gas Co. v. Pan American Petroleum Corp.

Colorado Interstate Gas Co. v. White Eagle Oil Co.

Northern Natural Gas Co. v. Hugoton Plains Gas and Oil Co.

DELAWARE (Suits in United States District Court):

Northern Natural Gas Co. v. Helmerich & Payne, Inc.

Northern Natural Gas Co. v. Hugoton Plains Gas & Oil Co.

Cities Service Gas Co. v. Pan American Petroleum Corporation

KANSAS (Suits in United States District Court):

Northern Natural Gas Co. v. Alf M. Landon

Northern Natural Gas Co. v. Margaret Landon Mills

Panhandle Eastern Pipe Line Company v. Charles Brecheisen

Cities Service Gas Company v. E. S. Villines and E. W. Campbell

KANSAS (Suits in State District Courts):

Northern Natural Gas Company v. Earl W. Campbell (Kearny County)

The Stevens County Oil & Gas Co. et al. v. Panhandle Eastern Pipe Line Co. (Stevens County)

Kansas-Nebraska Natural Gas Co. v. H. M. Gillespie et al. (Sedgwick County)

Fred Shore & Hazel Shore v. Western Natural Gas Co. and Cities Service Gas Co. (Seward County)

G. L. Hayward and Inez Hayward v. Island Gas, Inc., Walter Kuhn and Panhandle Eastern Pipe Line Co. (Morton County)

Cities Service Gas Company v. E. S. Villines and E. W. Campbell (Kearny County)

Colorado Interstate Gas Company v. Fred P. Fulton and Esther Fulton (Kearny County)

Northern Natural Gas Company v. Catherine Van Doren (Kearny County)

Kansas-Nebraska Natural Gas Co. v. Ben F. Brack (Sedgwick County)

Kansas-Nebraska Natural Gas Co. v. Albert A. Thornburgh and Virginia Thornburgh (Kearny County)

Kansas-Nebraska Natural Gas Co. v. Mary E. Thornburgh (Kearny County)

Kansas-Nebraska Natural Gas Co. v. L. R. Roderick and Florence Roderick (Kearny County)

Kansas-Nebraska Natural Gas Co. v. Barbara J. Beymer and Clyde E. Beymer, Jr. (Kearny County)

Kansas-Nebraska Natural Gas Co. v. E. W. Campbell and P. G. Campbell (Kearny County)

Kansas-Nebraska Natural Gas Co. v. B. C. McCue and Della McCue (Kearny County)

Kansas-Nebraska Natural Gas Co. v. Catherine Van Doren and H. N. Van Doren (Kearny County)

Kansas-Nebraska Natural Gas Co. v. Gladys E. Campbell (Kearny County)

Kansas-Nebraska Natural Gas Co. v. John S. Campbell (Kearny County)

J. E. Heintz and Margaret E. Heintz v. Cities Service Oil Company and Northern Natural Gas Co. (Morton County)

NEBRASKA (Suits in State Court):

Northern Natural Gas Co. v. Pan American Petroleum Corp. (Lancaster County)

Kansas-Nebraska Natural Gas Co. v. White Eagle Oil Co. (Lancaster County)

NEBRASKA (Suits in United States District Court):

Northern Natural Gas Co. v. Magnolia Petroleum Corp. (Lincoln)

Northern Natural Gas Co. v. Saturn Oil & Gas Corp. (Lincoln)

OKLAHOMA (United States District Court):

Panhandle Eastern Pipe Line Co. v. C. W. Barbour, et al. (Western District)

Northern Natural Gas Co. v. William Broadhurst (Northern District)

Northern Natural Gas Co. v. Anne Parker (Western District)

Cities Service Gas Co. v. J. M. Huber Corp. (Northern District)

Cities Service Gas Co. v. Forrest H. Lindsay, et al. (Northern District)

Cities Service Gas Co. v. M. F. Powers (Northern District)

OKLAHOMA (State District Court, Tulsa):

Colorado Interstate Gas Co. v. William Broadhurst
Colorado Interstate Gas Co. v. Helmerich
Cities Service Gas Co. v. M. F. Powers

TEXAS (Suit in United States District Court):

Cities Service Gas Co. v. W. E. Bakke (Western District, San Antonio Division)

APPENDIX B

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., and Charles R. Ross.

TEXACO INC., ET AL., Docket Nos. G-15546, *et al.*

Order Requiring Refunds in Certain Proceedings and Terminating All Proceedings

(Issued March 5, 1962)

Respondents in the above-entitled proceedings have heretofore filed proposed increased rates solely reflecting reimbursement for the additional gas gathering tax of one cent per Mcf imposed upon said respondents, effective August 1, 1958 by the State of Louisiana pursuant to Section 678 of Title 47 of the Louisiana Revised Statutes. Respondents' proposed rates were suspended for one day and thereafter permitted to go into effect subject to refund of the increase in the event the tax was subsequently invalidated. On November 17, 1958, the Louisiana legislature suspended the operation of the gathering tax, effective December 1, 1958, and early in 1960 the Louisiana Supreme

Court held the tax unconstitutional. *Bel Oil Corp., et al. v. Rufus W. Fontenot, Collector*, 238 La. 1002, 117 S. 2d 571; *Southern Natural Gas Co. v. Robert Q. Roland, Collector of Revenue*, 240 La. 471, 123 S. 2d 891. [footnotes omitted]

* * *

Texas Eastern, Tennessee, United Fuel, and Southern — all of which filed petitions to intervene during the month of November, 1961 — are direct purchasers of respondents, and as such were routinely served with copies of the May 29 order. They, too, had ample opportunity to seek intervention and or rehearing but neglected to do so. It might be added, moreover, that each of the above pipelines was served with a copy of the April 14, 1961 order, granting rehearing to certain of the respondents. Such notice was sufficient to alert the purchasers that the Commission was contemplating modification of its February 21 order and that the refund seemingly promised them by said order was in jeopardy. Although failure of the November petitioners to seek intervention and or rehearing prior to May 29 did not bar them from doing so promptly thereafter, their protracted lack of diligence both before and after the controverted order prevents us from extending them grace at this late date.

In light of the preceding considerations, we shall vacate the August 30 order insofar as it permitted intervention by Southern and the Distributors and insofar as it reopened proceedings other than those designated in Appendices C, D, or E hereto. Additionally, we shall reject as untimely the petitions for intervention filed in November, 1961, by Texas Eastern, Tennessee, Southern and United Fuel. In taking this action, however, we do not intend and should not be construed to foreclose any party from seeking whatever relief, if any, may be appropriate under state law. Cf. *Pan American Petroleum Corp. v. Superior Court*, 366 U.S. 656 (1961).

APPENDIX C

Cases Now Pending in Which the Question of What is the Effective Filed Rate and the Question of Retroactive Refunding Under the Natural Gas Act Are in Issue

United States Court of Appeals for the Tenth Circuit:

Sun Oil Company v. FPC, No. 7018
Phillips Petroleum Company v. FPC, Nos. 7024, 7025, 7026

United States Court of Appeals for the Third Circuit:

Shell Oil Company v. FPC, No. 14031
Public Service Commission of New York v. FPC, No. 14051

United States Court of Appeals for the District of Columbia Circuit:

Sun Oil Company v. FPC, No. 17005
Socony-Mobil Oil Company, Inc. v. FPC, Nos. 17010 and 17011
Mississippi River Fuel Corporation v. FPC, No. 17013
Continental Oil Company, et al. v. FPC, No. 17009

United States Court of Appeals for the Fifth Circuit:

Callery Properties, Inc. v. FPC, No. 19563
Placid Oil Company v. FPC, No. 19622
Continental Oil Company and Newmont Oil Company v. FPC, No. 19651
W. H. Hunt, Trustee for Hassie Hunt Trust and Caroline Hunt Sands and Loyd B. Sands v. FPC, No. 19653
Union Oil Company of California v. FPC, No. 19654
Humble Oil & Refining Company v. FPC, No. 19657
Southern Natural Gas Company and Phillips Petroleum Company v. FPC, No. 19661
Austral Oil Company, Inc. v. FPC, No. 19662

United States Court of Appeals for the Ninth Circuit:

Tidewater Oil Co. v. FPC, No. 17909

APPENDIX D

TRUE COPY

STATE OF KANSAS
John Anderson, Jr., Governor

[Seal]

STATE CORPORATION COMMISSION
Topeka

June 1, 1962

Richard A. Solomon, General Counsel
Federal Power Commission
Washington, D. C.

Re: U. S. Supreme Court Case #823

Pan American Petroleum Corporation

v.

Kansas-Nebraska Natural Gas Company

Dear Mr. Solomon:

The Kansas Commission was this date informed that the Supreme Court requested of the Solicitor General a memorandum regarding the effect of the Eighth Circuit Court's opinion in the above referred to case upon the administration of the Natural Gas Act. Although the Kansas Commission is not directly involved in this proceeding, we are concerned about the consequences of the Eighth Circuit Court's decision. As we interpret the Court's opinion they repudiate the "filed rate doctrine" as set forth in the Northwestern Public Service Company v. Montana-Dakota Utilities Co. case previously decided by the Eighth Circuit. In the last mentioned case, Mr. Howard E. Wahrenbrock, Assistant General Counsel for the Federal Power Commission, filed a brief on behalf of the Federal Power Commission which we think clearly sets forth why the filed rate doctrine should be sustained and perpetuated. In our opinion, the redetermination of a rate, either higher or lower, in collateral litigation without an appeal from the Federal Power Commission's order

accepting the rate, could only lead to confusion and uncertainty to the detriment of all parties.

Without specific powers to order reparations which we feel are absent in the Natural Gas Act, the benefits of any price redetermination ensue only to the contracting party. This fact was made clear to the Kansas Commission in a recent proceeding involving the Kansas-Nebraska Natural Gas Company. Our Commission, in Docket 65,687-U, ordered Kansas-Nebraska to refund $422,000 which they have as of this date recovered from producers and land-owners as a result of the invalidation of Kansas .11-cent minimum price order. As of this date the Commission has been unsuccessful in getting Kansas-Nebraska to make a refund. A copy of their Petition for Rehearing is enclosed and you will note that in the first paragraph of their Petition, they contend that our Commission has no statutory authority or jurisdiction to order the refund.

Because of our concern for the perpetuation of the filed rate doctrine, we felt compelled to express our opinion prior to the filing of the Solicitor General's memorandum with the Supreme Court. In addition to the Petition for Rehearing in the Kansas Nebraska docket, we enclose for your consideration a copy of the Brief filed by FPC in the previously mentioned Northwestern Public Service Company v. Montana-Dakota Utilities Co. case.

Yours very truly,

/s/ Richard C. Byrd
Richard C. Byrd, Chairman

RCB:tk

Enclosures

cc: Joseph C. Swidler, Chairman
Federal Power Commission
Washington, D. C.

Address All Communications to the
State Corporation Commission

to (*supra*, pp. 9-16), holding the filed rates to be the legal rates, are therefore equally clear authority, contrary to the holding below, that an incomplete filing does not invalidate the filed rate. For the same basic reason the filed rate, even where improperly filed, has nevertheless been held to be the legal rate." (p. 37)

• • •

"Unlike lateness and incompleteness of filing, the question of fraud has not been passed on by the Commission. But that, too, is a matter subject to the primary jurisdiction of the Commission." (p. 39)